

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

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)  
) MDL No. 1456  
)

) Civil Action No. 01-CV-12257 PBS  
)

THIS DOCUMENT RELATES TO  
01-CV-12257-PBS AND 01-CV-339

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) Judge Patti B. Saris  
) Chief Magistrate Judge Marianne B. Bowler  
)

**THE BMS DEFENDANTS' SUPPLEMENTAL REPLY IN  
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT  
(SUBMITTING EXHIBITS TO THE VEN-A-CARE LETTER  
OF OCTOBER 2, 1996)**

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Dated: May 18, 2006

In support of their motion for summary judgment [Docket # 2263, filed March 15, 2006], the BMS defendants rely on a letter from Zachary Bentley and T. Mark Jones of Ven-A-Care to Bruce Vladeck, the Administrator of the Health Care Financing Administration (“HCFA”) dated October 2, 1996. [Exhibit L to the Declaration of Steven M. Edwards dated March 15, 2006.] Plaintiffs have objected to that letter on the ground that it does not include the exhibits that are referenced in the letter. [Plaintiffs Memorandum In Opposition to the BMS Defendants’ Motion For Summary Judgment, at p 33, Filed Under Seal, April 7, 2006].

The letter was produced to defendants by the federal government in response to a subpoena, but did not include the exhibits. Prior to the filing of BMS’s motion for summary judgment, on March 6, 2006, counsel for BMS asked counsel for Ven-A-Care to provide the exhibits, but they declined to do so. See Docket # 2376, Affidavit of Lyndon M. Tretter in Support of Motion to Compel the Production of Exhibits to a Letter Sent by Plaintiff Ven-A-Care of the Florida Keys to HCFA. BMS then made a motion for an order compelling production of the exhibits [Docket # 2374], and noted in its reply to Plaintiffs’ response that it intended to submit the documents once Judge Bowler had resolved the motion. [Docket # 2496, BMS Defendants’ Reply Memorandum of Law in Support of Motion for Summary Judgment, at p 13, fn. 23]. Last week, Judge Bowler granted the motion and ordered Ven-A-Care to produce the exhibits. Ven-A-Care produced the exhibits and designated them highly confidential under the protective order.

Accordingly, the exhibits to the Ven-A-Care letter are being filed under seal and submitted herewith.

Dated: Boston, Massachusetts  
May 18, 2006

Respectfully Submitted,

By: /s/ Jacob T. Elberg  
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**CERTIFICATE OF SERVICE**

I, James S. Zucker, hereby certify that on May 18, 2006, pursuant to Paragraph 11 of Case Management Order No. 2, I have caused to be served on all counsel of record a true and correct copy of the foregoing BMS Defendants' Supplemental Memorandum in Support of Their Motion for Summary Judgment (Submitting Exhibits to the Ven-A-Care Letter of October 2, 1996) by electronic service, by sending a copy of same to Lexis/Nexis File and Serve for posting and notification to all parties.

/s/ James S. Zucker  
James S. Zucker